SUPREME COURT OF NOVA SCOTIA

Citation: Braithwaite v. Bacich, 2011 NSSC 176

Date: 20110504
Docket: Syd. No. 24155 (109562)
Registry: Sydney

Between:

David Braithwaite

Plaintiff

v.

Jim C. Bacich, Greg A. Blanchard, Reinhold M. Endres, Q.C., George L. Fox, Grant Vaughan, Bill McKee, Kevin McNamara and Lisa Morris, all Trustees of the Nova Scotia Public Service Long Term Disability Plan Trust Fund

Defendants

Judge: The Honourable Justice Cindy A. Bourgeois

Heard: April 12, 2011, in Sydney, Nova Scotia

Written Decision: May 4, 2011

Counsel: David Braithwaite, in person
Colin D. Bryson, Q.C., for the Defendant

By the Court:

Introduction:

[1] The Plaintiff David Braithwaite was at one point, an employee of the Cape Breton Correctional Centre, thus part of the Nova Scotia Department of Justice. He was employed as a correctional officer. He has not worked at the Correctional Centre since 1994, other than a six week stint in 1996. Mr. Braithwaite has filed a claim seeking reinstatement of long term disability benefits which he alleges is owed to him, as well as significant punitive damages. His Originating Notice and Statement of Claim is dated July 24, 1998.

[2] The Defendants are individual Trustees of the Nova Scotia Public Service Long Term Disability Plan Trust Fund, which provides medical and disability coverages for employees of the Province of Nova Scotia. The Defendants have brought a motion pursuant to Civil Procedure Rule 82.18, seeking to have Mr. Braithwaite's claim struck due to the inordinate delay in having it brought to trial. Mr. Braithwaite opposes the motion, and asserts that he not only intends to bring the matter forward, but that he is anxious to have "his day in Court".

Background:

[3] As noted above, this matter was commenced in 1998. The material before the Court discloses that the process has not been straightforward, nor timely. The history of the dispute between the parties can be summarized as follows:

a) By way of Originating Notice and Statement of Claim dated July 24, 1998, Mr. Braithwaite brought a claim against the Defendants for Long Term Disability benefits allegedly wrongfully terminated in June of 1996, and for punitive damages. Mr. John Morgan was solicitor for Mr. Braithwaite at that time. A review of the pleadings disclose that Mr. Braithwaite's medical condition was central to the claim, in that he alleged he was disabled, and that his employer unreasonably refused to offer him alternate employment. The relief sought included punitive damages in excess of two million dollars, as well as an order compelling the re-instatement and ongoing payment of LTD benefits.

b) In September of 1998, the Defendants made a motion pursuant to former Civil Procedure Rule 14.25, seeking to have the claim dismissed on the basis of res judicata, asserting that the issue of whether Mr. Braithwaite was disabled from his employment, had been determined by virtue of a medical review. This motion was dismissed by the Chambers judge in November of 1998, with costs of $1000.00 being awarded to Mr. Braithwaite.

c) The Defendants appealed the above decision to the Nova Scotia Court of Appeal, with a divided Court dismissing the appeal in May, 1999, with costs of $1500.00 being awarded to Mr. Braithwaite.

d) The Defendants filed a defence on May 31, 1999, followed by a List of documents on July 27, 1999. Mr. Braithwaite has never filed a List of documents, nor Affidavit of documents in the proceedings. In the Defence, it is acknowledged that Mr. Braithwaite was disabled for a period of time during the course of his employment. However, the disability allegedly ceased as of July 1996, after which point, Mr. Braithwaite would no longer be eligible for LTD benefits as he did not

meet the policy definition of "disabled", had refused to participate in a rehabilitation program, and because the claim was res judicata.

e) As a result of his employment being terminated in 1996 for absenteeism, Mr. Braithwaite filed a grievance under the terms of the existing contract between the Nova Scotia Government Employees Union and the Department of Justice. Heard over 8 days, a decision was rendered in May of 2000. Mr. Braithwaite was provided with representation by his Union during the proceeding. A central issue during that hearing was whether Mr. Braithwaite was entitled to LTD benefits due to being disabled, because if such a finding was made, then in accordance with the terms of the collective agreement, he could not be properly terminated for absenteeism. Alternatively, if there was no disability, the employer had no resulting duty to accommodate. After hearing medical evidence, it was determined that Mr. Braithwaite was not disabled, not entitled to LTD benefits, and therefore his dismissal for absenteeism was appropriate. Although Mr. Braithwaite submitted at the hearing of this motion that he did not

agree with the outcome of the arbitration, there is no indication that this decision was appealed, or formally challenged in any way.

f) On June 6, 2000, Mr. Braithwaite filed a "Notice of Intention to Act in person".

g) It would appear that the matter was then dormant until 2004. On March 4, 2004 a "Notice of Intention to Proceed" was issued by the Prothonotary pursuant to then Civil Procedure Rule 28.11, followed by a "Notice of Order Dismissing Action" on October 4, 2004.

h) On December 16, 2004, Mr. Braithwaite filed an application seeking to extend the time for filing a "Notice of Trial". Mr. Braithwaite had the assistance of legal counsel, Ms. MacKenzie, in the preparation of the application. In response, the Defendants filed an application seeking to strike the claim, or in the alternative, an order requiring Mr. Braithwaite to pay security for costs. The applications were heard by Justice S. J. MacDonald on April 11, 2005, with a written decision being issued on May 12, 2005 (2005 NSSC 116).

The Order arising therefrom was issued May 24, 2005. The Court determined that the time for filing a "Notice of Trial and Certificate of Readiness" was to be extended to May 31, 2005, and that Mr. Braithwaite was to pay $3000.00 by way of security for costs. In rendering decision, Justice MacDonald stated:

> [30] On the totality of the evidence, although it appears he is proceeding slow in this action I am not satisfied it falls within those cases (usually the courts have found in the vicinity of ten year range) of delay so as to be described as an inordinate and unexcusable (sic) delay by the Plaintiff.
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> [31] As soon as the notice went out he got counsel who replied but ultimately declined to take the case. He now wants to proceed on his own realizing the necessity of bringing the matter to trial.
>
> [45] In essence Mr. Braithwaite you have got one last chance to get your material together but you have got to pay those costs on or before the end of May. Get your Notice of Trial in before the end of May or I dare say there will likely be another application and you might not be as successful.

I) On May 31, 2005 Mr. Braithwaite paid the security as ordered. He also filed with the Court a "Notice of Trial". The Notice indicated that Mr. Braithwaite intended to call two medical experts at trial, however,

their expert reports were not attached to the Notice, as was required by the Rules at that time.

j) It would appear that the file again remained dormant until July 20, 2007 when Mr. Braithwaite filed a "Notice of Intention to Proceed".

k) There was no apparent further activity in relation to this matter until November 13, 2008 when Mr. Braithwaite requested that the Court facilitate a Case Management Conference. A conference was scheduled on December 16, 2008 with Justice S.J. MacDonald. It would appear however, that given Mr. Braithwaite indicated at that time that he would be represented by counsel, Mr. Burchell, at the trial of this matter, the conference was adjourned to arrange for Mr. Burchell's participation. From the material filed in support of the motion, it is clear that the adjournment was intended to be brief and that Mr. Bryson attempted to facilitate Mr. Burchell's involvement. In a letter dated December 16, 2008, to Mr. Burchell and copied to Mr. Braithwaite, Mr. Bryson writes:

> At a Case Management Conference in this matter this morning involving me, Mr. Braithwaite and Justice Simon MacDonald, Mr. Braithwaite indicated that you were retained in this matter if it went to trial. Hearing this, Justice MacDonald felt that you should be part of the conversation. This immediate issue is my client's desire to make an application to strike the claim for want of prosecution and, if such an application is unsuccessful, then directions on how the case is to proceed.
>
> Please call ASAP to clarify your involvement in this, as we could like to resume the Case Management Conference this week.

l) There is no indication that either Mr. Burchell or Mr. Braithwaite attempted to respond to Mr. Bryson's letter, nor reconvene the Case Management Conference.

m) On October 9, 2010 Mr. Braithwaite filed a "Request for a Date Assignment Conference". The Defendant objected to this request on two primary basis: firstly, that the matter was not ready to be set for trial, as the Plaintiff had never filed a List of documents, nor had discoveries been undertaken; and secondly, that the Defendants intended to make an application seeking to have the matter dismissed for want of prosecution. It was also pointed out that the Request was deficient or questionable in many ways, including that it responded

"yes" to the standard inquiry that all documents had been disclosed and discoveries undertaken, and that Mr. Braithwaite did not intend on introducing any documents or calling witnesses at the trial. It also seemed to suggest that Mr. Braithwaite viewed the claim as being about "wrongful dismissal". Heard on November 1, 2010, this Court determined that it was premature to have a Date Assignment conference and directed that should the Defendants wish to follow through with a motion for dismissal that it should be filed no later than January 3, 2011. Such a motion was filed as directed, and this Court is now asked to determine whether the action commenced by Mr. Braithwaite should be dismissed pursuant to Rule 82.18.

The Applicable Rule and Law:

[4] As noted above, this motion is brought pursuant to Civil Procedure Rule 82.18. It reads:

> 82.18 A judge may dismiss a proceeding that is not brought to trial or hearing in a reasonable time.

[5] The Court has not been made aware of any decisions made under the above Rule, since it came into effect on January 1, 2009. It would appear that this provision was intended to replace Rule 28.13 under the Nova Scotia Civil Procedure Rules, 1972, which read:

> 28.13. Where a plaintiff does not set a proceeding down for trial, the defendant may set it down for trial, or apply to the court to dismiss the proceeding for want of prosecution and the court may order the proceeding to be dismissed or make such order as is just.

[6] There is no shortage of case authorities with respect to the earlier Rule, which I find have continuing applicability to the proper consideration of a motion brought under current Rule 82.18.

[7] In my view, the factors to be considered in relation to such a motion, are well established, and not controversial. As stated by Hamilton, J.A. in **MacMillan v. Children's Aid Society of Cape Breton**, 2006 NSCA 13:

> [5] The test for dismissal of an action for want of prosecution is well established. It is summarized in **Clarke v. Sherman et al.** (2002), 205 N.S.R. (2d) 112; 643 A.P.R. 112 (C.A.):
>
> > [8] Thus, to summarize, in order to succeed the onus is upon a defendant to show: first, that the plaintiff is to blame for inordinate delay; second, that the inordinate delay is inexcusable; and third, that the defendant is likely to be seriously prejudiced on account of the

> plaintiff's inordinate and inexcusable delay. If the defendant is successful in satisfying these three requirements, the court, before granting the application must, in exercising its discretion, go on to take into consideration the plaintiff's own position and strike a balance - in other words, do justice between the parties.

[8] It is clear that in addressing such a motion, the Court must consider not only all three of the enunciated factors, but must also undertake a balancing of justice between the parties, most notably, considering the plaintiff's position (See **Brogan v. RBC Dominion Securities Inc**., 2009 NSSC 351). It is equally clear that each case must be determined on the basis of its own particular circumstances.

[9] The Defendants have asserted however, that in some circumstances, the third factor as outlined above, may be presumed, resulting in a plaintiff carrying the burden of establishing there has been no serious prejudice. This approach has clearly been adopted, in appropriate circumstances (see **Martell v. McAlpine Ltd.** (1978), 25 N.S.R.(2d) 540), and recently re-articulated by the Court of Appeal in **MacMillan, supra**, as follows:

> [19] The case law indicates prejudice may be presumed in some circumstances. The judge referred to this case law and found that in the circumstances of this case they should presume serious prejudice rather than require the respondents to prove it:

[23] Mr. Justice Chipman of our Court of Appeal in **Saulnier v. Dartmouth Fuels Ltd.** (1991), 106 N.S.R. (2d) 425, . . . confirmed the Cooper test in **Martell** on the question of onus at page 430 . . . I quote:

> All that can be said generally about onus is that while the onus is initially upon the defendant as applicant to show prejudice, there may be cases where the delay is so inordinate as to give rise in the circumstances to an inference of prejudice that falls upon the plaintiff to displace. The strength of the inference to be derived from any given period of delay will depend upon all the circumstances in the case.'

[24] And finally in **Moir v. Landry** (1991), 104 N.S.R. (2d) 281 (N.S.C.A.), this was a case involving a three year delay. Mr. Justice Hallett, of the Court of Appeal, writing for the Court, noted that the onus to establish prejudice falls on the defendant except in cases of unusual long delay, such as the ten years in **Martell**. Justice Hallett said at page 284 in **Moir v. Landry, supra** . . .:

> A plaintiff has a right to a day in Court and should not lightly be deprived of that right. Therefore, it is only in extreme cases of inordinate and inexcusable delay that a Court should presume serious prejudice to the defendant in the absence of evidence to support such a finding.

[25] This is one of those cases. I am satisfied that as a result of the inordinate, inexcusable, extreme delay in excess of ten years in relation to this matter, that I can presume serious prejudice to the defendants. I do not find that the plaintiff has satisfied the onus to establish that no such prejudice exists.

Position of the Parties:

[10] The Defendants assert that the facts of this situation clearly establish the first two components of the test outlined above, namely that the delay involved in this matter was not only inordinate, but inexcusable. It is further asserted that given the extent of the delay, that prejudice should be presumed, with a corresponding requirement for Mr. Braithwaite to establish that no prejudice will result.

[11] As pointed out by Mr. Bryson, although the claim was initiated in 1998, the alleged cause of action, Mr. Braithwaite's disability and lack of accommodation in the workplace, relates to events which occurred in 1996, nearly 15 years ago. This alone, raises concerns with respect to the memory of witnesses, and the availability of reliable evidence in order for the Court to ultimately assess the claim being advanced.

[12] The Defendants further point to the lack of meaningful advancement of the claim before the Court. Although Mr. Bryson acknowledges that a delay of approximately 18 months was due to his clients' initial application to strike based upon a res judicata argument and subsequent appeal, he asserts that the rest of the

delay, is squarely attributable to Mr. Braithwaite's failure to meaningfully advance the claim. He points to the fact that notwithstanding the filing of a List of Documents by the Defendants in July of 1999, Mr. Braithwaite has never done the same, thus not abiding by his obligation for basic disclosure. Discovery hearings have not been undertaken, and although noting that he intended to rely upon the expert evidence of two physicians in his "Notice of Trial" filed in May 2005, expert reports were never provided by Mr. Braithwaite. One of the physicians is now deceased.

[13] Mr. Braithwaite, both through his oral and written submissions, clearly desires to "have his day in Court" and purports that from his perspective, there is nothing to prevent a hearing being held as soon as possible. It is also clear, particularly from his written submissions that he views the Defendants and their legal counsel as not only inappropriately delaying the trial of this matter, but purposefully not following court directions, most notably with respect to the costs awarded in the proceeding, resulting in undue hardship to him. Several excerpts from Mr. Braithwaite's written submissions of April 11, 2011 are illustrative of his position:

> There have been (3) three hearings on this case and I have won all three of them.

The first was in court in Sydney my lawyer was John Morgan where the judge ruled in my favor and awarded my $1000.00 in cost which I never received. The lawyer on behalf of the trustees of the Nova Scotia Public Service Long Term Disability Plan Trust Fund appealed this decision and the case was taken to Supreme Court.

The hearing in Supreme Court was decided in my favour, and awarded me $1500.00 in cost which I never received.

The next hearing I represented myself and the Judge gave me time to request a hearing, but the lawyer on behalf of the trustees of the Nova Scotia Public Service Long Term Disability Plan Trust Fund put off a hearing and had me put up $3000.00 dollars (which I had to borrow) I called and asked for a trail date but was put off until 2010.

My medical record can be obtained for the lawyer on behalf of the trustees of the Nova Scotia Public Service Long Term Disability Plan Trust Fund by giving my Doctor (Dr. J. Wawrzyzyn) a call.

After every appeal by the lawyer on behalf of the trustees of the Nova Scotia Public Service Long Term Disability Plan Trust Fund, I complied with their requests and applied with the court for another hearing, within the time barrier set.

The lawyer on behalf of the trustees of the Nova Scotia Public Service Long Term Disability Plan Trust Fund, want to put off this case because it will show that there is racial overtones involved. The case also has medical overtones from my medical report to show wrongful dismissal. I have medical statements to prove that my illness at the times of my dismissal to show I was unable to work, and can prove that I was not treated fairly in giving me a chance to return to work.

> I had to put up $3000.00 dollars (which I had to borrow) whereas they have not paid me anything from what I was awarded in the cases that were settled in my favor. I am not every allow to collect the interest gained on my 3000.00.

Analysis:

[14] I turn now to consider the merits of the motion.

Has there been inordinate delay?

[15] This action was commenced in 1998, alleging that Mr. Braithwaite was improperly denied LTD benefits in 1996. Since that time, there has been minimal progress with respect to advancing the action towards trial. The Defendant acknowledges that 18 months of the total 13 years since the action was issued can be attributed to the applications which it brought. I accept, that there was some delay in the progression of the action due to the Defendants' pre-trial applications, however, I find that such delay was minimal in the overall time frame that it has taken this matter to progress.

[16] The majority of the delay of 13 years from the commencement of the action to the present motion, can be attributable to Mr. Braithwaite. The Court is mindful that self-represented litigants often struggle with the requirements of procedure,

and that a slower pace is not unusual. However, the delay in relation to this matter, goes well beyond what may be considered reasonable. Mr. Braithwaite has not undertaken even the basic requirement for documentary disclosure, having failed to file a List of documents under the old Rules, or an Affidavit of documents under the current Rules. He asserts that the Defendants can retrieve his family doctor's file. In his submissions he asserts he has documents that can "prove his case", but asserted in his oral submissions that he intended to hold this evidence "close to his chest", suggesting that he had no intention of producing same until trial. Obviously, his position on disclosure is misguided. He was represented by Counsel for two years following the commencement of the action. This is well within the time frame the previous Rules contemplated for the filing of a List of documents.

[17] I have also considered whether the conduct of the Defendants in this matter could be considered as being accepting of, or acquiescing to Mr. Braithwaite's delay. In this regard, I have noted the comments of Chipman, J.A. in **Canada (Attorney General) v. Foundation Co. of Canada** (1990), 99 N.S.R. (2d) 327 (S.C.A.D.) as follows:

> [48] A plaintiff's conduct of the proceeding can and should also be judged to some degree in the context of that of the

> defendants. Acquiescence or waiver on the part of the defence are proper matters to be taken into account in determining the excusability of the plaintiff's conduct . . . There is no duty on a defendant to actually take positive steps to move the matter forward or to send out warnings and exhortations to the plaintiff to proceed. However, the presence or absence of these actions may be relevant in determining whether the defence acquiesced in the slow tempo of the litigation.

[18] There is no indication that the Defendants have acquiesced in Mr. Braithwaite's delay in having this matter advanced. In fact, the material before the Court indicates that the Defendants have clearly made known to Mr. Braithwaite and to his former counsel, that they were concerned with the passage of time and the lack of documentary disclosure in particular.

[19] I readily find that there has been an inordinate delay in having this matter proceed.

Has there been inexcusable delay?

[20] Some of the delay in relation to this matter is clearly explainable by virtue of Mr. Braithwaite being self-represented. It is noted however, that in addition to being represented formally by counsel of record until 2000, he has had the benefit of consulting on at least two other occasions with members of the legal profession.

Some delay could also arguably be attributed to the fact that Mr. Braithwaite was involved in a lengthy arbitration in 2000, which likely diverted his attention from the present litigation. I cannot find however, that either his self-representation, or the grievance process, are sufficient to excuse the extent of the delay in the present instance.

[21] Mr. Braithwaite has, despite numerous warnings, simply failed to move this matter forward in a meaningful way. Although I note his assertion that he has on several occasions asked for trial dates to be set, this, in my view, is insufficient. The act of asking for trial dates is meaningless, if the basic procedural steps which must precede having dates assigned have not been met. I again point to the failure to undertake documentary disclosure, as well as to provide expert reports in May of 2005 with his Notice of Trial, as required at that time. It is also of no benefit to Mr. Braithwaite's position that he asserts that the Defendants can simply contact his doctor and others to collect whatever documents they want. The Defendants are under no obligation to collect, nor guess, as to what documents exist which are relevant to Mr. Braithwaite's claim.

[22] As noted above, Mr. Braithwaite has received warnings that inaction could place his claim in jeopardy. This was made clear to him by virtue of the Notices issued by the Prothonotary, the asserted position of the Defendants, and the May 2005 decision of Justice MacDonald which clearly advised Mr. Braithwaite that the claim may be in jeopardy if he did not start attending to his obligations. I accept the Defendants' assertion that the delay in this instance is not excusable.

Is the Defendant likely to be prejudiced based upon the inordinate and inexcusable delay?

[23] I have considered the authorities as outlined above, and conclude that given the extent and nature of the delay involved in the present case, that serious prejudice to the Defendants should be presumed, unless rebutted by Mr. Braithwaite. Notwithstanding that determination, I would be satisfied, should the burden have remained with the Defendants, that it has been met. There is clear and significant prejudice to the Defendants in this instance.

[24] Mr. Braithwaite alleges that he was medically disabled in 1996 and that he was unfairly treated in the work place when he asked to be accommodated. He

asserts that there may be racial overtones to this matter, given that he is a person of African-Canadian descent. One of his primary treating physicians during that period is now deceased, thus preventing the Defendants from ascertaining the basis of any opinion he may have put forward, or effectively cross-examining him, should the matter proceed to trial. Mr. Braithwaite has not produced any documentation which would be of assistance in understanding the genesis of the concerns he had regarding the environment of his workplace in 1996. This has prevented the Defendants from being able to meaningfully make inquiries about the allegations, including talking to witnesses, or potentially seeking out other relevant documentation. Even should Mr. Braithwaite now attempt to make the documentary disclosure which should have been undertaken 12 or 13 years ago, clearly, memories fade and documentation is not always available, after such a long passage of time.

Balancing:

[25] Having found that the Defendants have established the three criteria noted above, I turn now to a balancing between the parties. The nature of this

consideration has been recently articulated by Leblanc, J. in **Brogan, supra** as follows:

> [69] In addition to the three-step test outlined above, the court must step back and assess the positions of the parties keeping in mind the draconian nature of the dismissal remedy. In the words of Lord Salmon, in **Allen, supra**:
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> > If the defendant establishes the three factors to which I have referred, the court, in exercising its discretion, must take into consideration the position of the plaintiff himself and strike a balance. If he is personally to blame for the delay, no difficulty arises. There can be no injustice in his bearing the consequences of his own fault. If, however, the delay is entirely due to the negligence of the plaintiff's solicitor and the plaintiff himself is blameless, it might be unjust to deprive him of the chance of recovering the damages to which he could otherwise be entitled.

[26] The Court is mindful of the drastic remedy being sought by the Defendants, and the resulting impact upon Mr. Braithwaite. It is clear, that Mr. Braithwaite, as a self-represented party, is finding the required process to bring his claim before the Court, cumbersome and difficult. I am able to also readily conclude, that Mr. Braithwaite genuinely feels that he has been "hard done by" the process, and in particular, the conduct of the Defendants and their counsel. The Court is not without a degree of empathy for Mr. Braithwaite.

[27] As a self-represented party, Mr. Braithwaite's beliefs are perhaps understandable, but based upon the material presented to this Court, I cannot find that they are justified. His view of how the proceedings have unfolded, when compared to the background outlined above, do not establish that he has been unduly delayed either by the Court itself, or by the Defendants and their counsel. I readily accept that the matter has sat dormant for significant periods of time, due to Mr. Braithwaite's lack of action, which prompted the Prothonotary to make attempts to have the matter dismissed or moved along in some fashion. Although Mr. Braithwaite clearly places blame for the delay at the feet of others, I find that the responsibility for the status of the matter, lies squarely with him.
Self-represented litigants are often afforded a degree of latitude in terms of the form and timing of their compliance with the rules of procedure. However, this cannot mean that self-represented litigants can be indefinitely excused from complying with fundamental obligations and the basic procedure to which all other parties must adhere. In this instance, Mr. Braithwaite is well beyond the boundaries of what can be viewed as acceptable conduct in the advancement of his action.

[28] I further find that Mr. Braithwaite's perception of how matters have unfolded during the course of the litigation is somewhat unreliable. His criticism of Defendants' counsel regarding the non-payment of costs in relation to prior applications is an example of how Mr. Braithwaite's assertions, upon closer analysis, are questionable. Mr. Bryson provided the Court with two pieces of correspondence which disclose that the payment of interlocutory costs was addressed with Mr. Braithwaite's counsel in 2000, disclosing that the sums awarded, were deducted from an outstanding judgment owing by Mr. Braithwaite to the Public Service Long Term Disability Plan Trust Fund. Further, I cannot conclude, based upon the review undertaken above, that Mr. Bryson in particular, conducted himself in any way which could be considered inappropriate, or worthy of criticism.

Conclusion:

[29] The Defendants have established that there has been inordinate and inexcusable delay in advancing this action. I am further satisfied that there will be significant prejudice to the Defendants should this matter proceed. Taking into consideration the position of Mr. Braithwaite, including the difficulties he has encountered as a self-represented litigant, I cannot conclude that it is in the interests of justice to have this matter continue to trial. Accordingly, I grant the Defendants' motion for dismissal.

[30] Given the nature of the motion, I will permit brief written submissions on the issue of costs. In the circumstances, I would ask that the Defendants put forward their position in this regard within 10 days of the release of this decision, with Mr. Braithwaite having the opportunity to respond 10 days thereafter.

J.